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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/614,631 07/12/00 HILGREN J 163.1382US01

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MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

EXAMINER

PAK, J

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

10/01/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

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Office Action Summary

Application No.
09/614,631

Applicant(s)
Hilgren et al.

Examiner
John Pak

Art Unit
1616



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 30 DAYS ~~4 MONTHS~~ FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 1-30 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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Claims 1-30 are pending in this application.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-9, drawn to antimicrobial concentrate or use compositions comprising various concentrations of acetic acid, octanoic acid, hydrogen peroxide, peracetic acid, peroctanoic acid, and chelating agent.
- II. Claims 10-11, drawn to a food product and a combination of 10-150 ppm acetic acid, 5-40 ppm octanoic acid, 4-20 ppm hydrogen peroxide, 5-50 ppm peracetic acid, 2-25 ppm peroctanoic acid, and 0.2-2.5 ppm chelating agent.
- III. Claims 12-22, drawn to a method of controlling microbial growth in an aqueous stream used for transporting or processing food product comprising treating the aqueous stream with a compositions comprising various concentrations of acetic acid, octanoic acid, hydrogen peroxide, peracetic acid, peroctanoic acid, and chelating agent.
- IV. Claims 23-26, drawn to antimicrobial concentrate or use compositions comprising various concentrations of acetic acid, septanoic¹ or nonanoic acid, hydrogen peroxide, peracetic acid, perseptanoic or pernonanoic acid, and chelating agent.
- V. Claim 27, drawn to a food product and a combination of 10-150 ppm acetic acid, 5-40 ppm septanoic or nonanoic acid, 4-20 ppm hydrogen peroxide, 5-50 ppm

¹ The term "septanoic" appears to be a mistake – does applicant mean "heptanoic?" If so, corections should be made throughout the claims and disclosure.

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peracetic acid, 2-25 ppm perseptanoic or pernonanoic acid, and 0.2-2.5 ppm chelating agent.

- VI. Claims 28-30, drawn to a method of controlling microbial growth in an aqueous stream used for transporting or processing food product comprising treating the aqueous stream with compositions comprising various concentrations of acetic acid, septanoic or nonanoic acid, hydrogen peroxide, peracetic acid, perseptanoic or pernonanoic acid, and chelating agent.

The six inventions as set forth above are distinct, each from the others, because they are each directed to divergent subject matter. Groups I-III are distinct from groups IV-VI because the two sets of groups utilize divergent active agents. Within each group set, the composition groups I and IV are distinct over the food + specific ppm required composition groups II or V, respectively, because the composition of groups I and IV read on other peracid type compositions that are not necessarily food-related, whereas composition of groups II and V require a search all over the food related art. The compositions I and IV are distinct over methods III and VI, respectively, because the compositions of I and IV can be used in materially distinct methods such as in the treatment of non-food hard surfaces.

The peracid art is a crowded place, and each invention such as this requires a laborious search and review of the exact disclosure of an extensive collection of prior art references, which require careful attention to the concentrations of various multiple components. A search and examination of one of the inventions as set forth above would already be of considerable burden

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due to the complexity of the multiple ingredients. To search and examine more than one invention, under the facts of this application, would place an undue burden on the Examiner.

Therefore, for reasons of distinctness and undue burden the restriction requirement is deemed to be proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier numbers for accessing the facsimile machines are (703) 308-4556 or (703) 305-3592.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Examiner Pak whose telephone number is (703) 308-4538. The Examiner can normally be reached on Monday through Thursday from 8:00 AM to 5:30 PM. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Mr. José Dees, can be reached on (703) 308-4628.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235.


JOHN PAK
PRIMARY EXAMINER
GROUP 1000